

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:14-CV-954**

**STUDENTS FOR FAIR ADMISSIONS,
INC.,**

Plaintiff,

v.

**UNIVERSITY OF NORTH CAROLINA
et al.,**

Defendants.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Federal Rule of Civil Procedure 34 and the Local Rules of the Middle District of North Carolina, Plaintiff Students for Fair Admissions, Inc. ("SFFA") requests that Defendants respond in writing and produce the documents described below within 30 days of service for inspection and copying at the offices of Consovoy McCarthy PLLC, 3033 Wilson Boulevard, Suite 700, Arlington, VA 22201, or at such other location to which the parties mutually agree.

INSTRUCTIONS

1. In responding to these document requests, You shall produce separately all documents in Your possession, custody or control, including documents in the possession, custody or control of Your agents and representatives.

EXHIBIT C

2. Any request concerning a partnership, limited liability company, or corporate entity includes its subsidiaries, affiliates, employees, members, agents, representatives, or attorneys.

3. Unless stated otherwise, requests concerning applicants, admitted students and enrolled students are limited to the application, admission, and enrollment of freshman and transfer undergraduate students at UNC-CH.

4. The term “or” is to be read in both the conjunctive and disjunctive and shall serve as a request for documents that would be responsive under a conjunctive reading in addition to all documents that would be responsive to a disjunctive reading.

5. If You claim any form of privilege or any other objection, whether based on statute, common law, or otherwise as a ground for not producing any requested document, please furnish a list identifying each document for which the privilege or other objection is claimed together with the following information: date, sender, recipient, persons to whom copies were provided together with their job titles, subject matter, basis on which a privilege or other objection is claimed, and the paragraph(s) of this request to which such document responds. If You claim privilege or any other objection with regard to only part of a document, produce the part as to which there is no objection.

6. If any document or copy was, but is no longer in Your possession, custody, or subject to Your control, please state and specify in detail for each such document: date, sender, recipient, persons to whom copies were provided together with their job titles, the information contained therein, the date upon which it ceased to exist, the disposition that was made of it and the identity of all persons having knowledge of the contents thereof.

7. Produce all documents in complete form, as kept in the normal course of business, and identify the file from which each document was taken.

8. These requests shall be deemed to be continuing so as to require supplemental answers from time to time until the date of trial.

TIME PERIOD

9. This Request for Production principally seeks documents and information prepared, sent, provided, received, in possession during, or relating to, the time period beginning with September 1, 2011, and continuing throughout the pendency of this litigation, or relating to this time period whenever prepared. Any request seeking documents from this time period refer to the “Relevant Period.” Any request seeking documents beyond the Relevant Period refer to documents “from any time.”

DEFINITIONS

1. “Answer” means the Answer filed by UNC in response to the Complaint filed by SFFA in this action on March 24, 2015.

2. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

3. “Complaint” means the Complaint SFFA filed in this action on November 17, 2014.

4. “Concerning” means referring to, describing, evidencing, or constituting. Requests for “documents concerning” any subject matter include documents concerning communications regarding that subject matter.

5. “Diversity” is defined to be synonymous in meaning and equal in scope to how UNC has used or does presently use that term in any printed or electronic documents.

6. “Document” or “documents” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

7. “Electronic databases” is defined to include, but is not limited to, all files maintained in any database, spreadsheet, or statistical programs, containing information on the race, geographic residence, qualifications, financial aid awards, and academic performance, of individuals who have or are seeking admission to UNC-CH, including applicants, admitted students, and enrolled students.

8. “Including” means including but not limited to.

9. “UNC-CH” means the University of North Carolina at Chapel Hill.

10. “UNC” means Defendants collectively, their predecessors, successors, divisions, subsidiaries, and affiliates, and all present and former directors, officers, employees, agents, consultants, representatives, attorneys, and any other persons acting for or on behalf of any of these entities or individuals.

11. The terms “the present” or “present time” mean the date on which Your answers to these interrogatories are filed.

12. “Printed Database” is defined to include, but is not limited to, any hard-copy collection of data containing information on the race, geographic residence, qualifications, financial aid awards, and academic performance, of individuals who have

or are seeking admission to UNC-CH, including applicants, admitted students, and enrolled students, except to the extent that such hard-copy collections merely replicate information found in Electronic Databases.

13. The term “race” means race, ethnicity, or national origin.

14. “Relate” means consisting of, referring to, reflecting, evidencing, or being in any way legally, logically or factually connecting with the matter referred to or having a tendency to prove or disprove the matter referred to.

15. “Representative” means any and all agents, servants and employees.

16. “Underrepresented Minority” is defined to be synonymous in meaning and equal in scope to how UNC has used or does presently use that term in any printed or electronic documents.

17. “You” and “Your” mean UNC.

DOCUMENT REQUESTS

1. All Electronic Databases from any time that include information concerning UNC-CH early action applications, early action admissions, other freshman applications, other freshman admissions, transfer applications, transfer admissions, freshman enrollment, and total undergraduate enrollment.

2. For any Electronic Database responsive to Request No. 1, provide any guide to data entry, codebook, key, manual, sorting capabilities, or data dictionary containing explanations or other information on the content or makeup of the data, variables, and observations in such Electronic Databases.

3. Documents sufficient to show the fields or variables included within the Electronic Databases responsive to Request No. 1.

4. All Printed Databases from the Relevant Period that include any information concerning UNC-CH early action applications, early action admissions, other freshman applications, other freshman admissions, transfer applications, transfer admissions, freshman enrollment, and total undergraduate enrollment.

5. For any Printed Database responsive to Request No. 4, provide any guide to data entry, codebook, key, manual, or data dictionary containing explanations or other information on the content or makeup of the data, variables, and observations in such Printed Databases.

6. Documents sufficient to show the fields or variables included within the Printed Databases responsive to Request No. 4.

7. Any guide to data entry, codebook, key, manual, sorting capabilities, or data dictionary containing explanations or other information on the content or makeup of the data, variables, and observations in any Electronic Database that includes information from any time concerning the academic performance of any enrolled student at UNC-CH.

8. Documents sufficient to show the fields or variables included within the Electronic Databases responsive to Request No. 7.

9. Any guide to data entry, codebook, key, manual, or data dictionary containing explanations or other information on the content or makeup of the data, variables, and observations in any Printed Database that includes information from any time concerning the academic performance of any enrolled student at UNC-CH.

10. Documents sufficient to show the fields or variables included within the Electronic Databases responsive to Request No. 9.

11. Any guide to data entry, codebook, key, manual, sorting capabilities, or data dictionary containing explanations or other information on the content or makeup of the data, variables, and observations in any Electronic Database that includes information from any time specifically concerning the academic performance of any enrolled Underrepresented Minority student at UNC-CH.

12. Documents sufficient to show the fields or variables included within the Electronic Databases responsive to Request No. 11.

13. Any guide to data entry, codebook, key, manual, or data dictionary containing explanations or other information on the content or makeup of the data, variables, and observations in any Printed Database that includes information from any time specifically concerning the academic performance of any enrolled Underrepresented Minority student at UNC-CH.

14. Documents sufficient to show the fields or variables included within the Electronic Databases responsive to Request No. 13.

15. All documents from the Relevant Period prepared by You concerning the racial composition of the pool of applicants, admitted persons, or enrollees to UNC-CH.

16. Documents sufficient to show all of Your employees (current and former) within the Office of Undergraduate Admissions and any other UNC-CH office that plays a role in formulating or implementing policies relating to undergraduate admissions during the Relevant Period, including each employee's title, responsibilities within the admissions office, race, and, if applicable, the number of admissions files each employee reviews annually, any geographic area of responsibility, and any other basis for assigning responsibility for review of any application.

17. All training manuals or other formal instructional materials from any time used to train or guide UNC-CH personnel on how to perform admissions tasks, including the evaluation of admissions files, the preparation of admissions reports, outreach activities, and recruitment activities.

18. Documents sufficient to show the names of any alumni or other individuals outside of UNC-CH who assist with Admissions process in any manner.

19. All guidelines, manuals, policies, regulations, descriptions of actual practices, codes, or notes kept by an individual employee of practices used by Your Office of Undergraduate Admissions during the Relevant Period.

20. All communications from the Relevant Period by or among Your representatives regarding the use of race in the admissions process at UNC-CH, including (but not limited to): the importance of diversity; any goals or targets for the racial composition of a particular admissions cycle or subset of applicants, admitted students or enrolled students; Your efforts to achieve a critical mass of Underrepresented Minority students; and Your efforts to increase or decrease the number of applicants, admitted students, or enrollees at UNC-CH by race.

21. All communications from any time to or from officials or employees of the North Carolina General Assembly or the State's Executive Branch regarding UNC-CH admissions practices and policies or about specific applicants or groups of applicants.

22. All communications from any time by or among Your employees or agents regarding: UNC-CH's use of race as a tiebreaker in the admissions process; any adjustments made to the criteria of admissions for particular racial groups or subsets; and

any changes or evaluations of UNC-CH's admissions policies in light of U.S. Supreme Court decisions.

23. A preliminary sample, stratified by race and whether the applicant is admitted, of the complete application files (including summary sheets, notes and other documents You prepared to supplement the application as received) for undergraduate admission to UNC-CH You received and evaluated during the Relevant Period, to be used by the parties to determine the number of complete application files needed to form a statistically significant sample of complete application files from the Relevant Period. This preliminary sample shall include 400 complete application files from each of the four major racial categories (Asian, Black or African-American, Hispanic or Latino, and White) from each admissions cycle during the Relevant Period. These complete application files will be randomly selected in a manner mutually agreed upon by the parties.

24. Any documents from the Relevant Period describing efforts of UNC-CH's admissions office to identify or recruit students based upon their or their household's income, wealth, or other socioeconomic factor.

25. Any documents from the Relevant Period describing efforts of UNC-CH's admissions office to identify or recruit students from geographic regions underrepresented at UNC-CH.

26. Your forms, policies, rules, guidelines or standards from the Relevant Period for classifying or describing the race of applicants for admission to UNC-CH, including (but not limited to):

- a. descriptions of race on admissions forms

- b. descriptions of race to the government of the United States, any state, or political subdivision thereof
- c. descriptions of race on internal records;
- d. descriptions of race to any other party.

27. All documents concerning any deviation, exceptions, or departures You made from UNC-CH's published admissions criteria during the Relevant Period.

28. All documents from the Relevant Period concerning the use in the admissions process of information regarding an applicant's relation to alumni of UNC-CH or donors of more than \$100,000 to UNC.

29. All documents reflecting School Group Review reports and/or any other comparison of any two or more individual applicants for admission to UNC-CH as part of the admission decision-making process during the Relevant Period.

30. All certifications or reports to the government of the United States or any State or political subdivision concerning, in whole or in part, the use of race in the admissions process at UNC-CH during the Relevant Period.

31. All communications with third parties (including, but not limited to, testing services, college boards, accreditation bodies, educational associations, ratings providers, and secondary schools, *but excluding applicants and their families*) during the Relevant Period concerning the use of race in UNC-CH's admissions process or the racial composition of UNC-CH applicants, admitted students, and enrolled students.

32. All documents from the Relevant Period that seek to measure, estimate, or predict, using race or other demographic variables, the application rate of high school students to UNC-CH, the rate at which applicants are admitted, the rate at which admitted students enroll, the academic performance at UNC-CH of enrolled students, the major selection at UNC-CH of enrolled students, the dropout rate at UNC-CH of enrolled

students, the graduation rate at UNC-CH of enrolled students, the academic performance at UNC-CH of enrolled students, or the debt levels accrued by enrolled students while at UNC-CH.

33. All documents concerning any complaint You received about the use of race in UNC-CH's admissions process during the Relevant Period, including (but not limited to) documents concerning the investigation and resolution of any complaint.

34. All reports, analyses, surveys, or other reviews or assessments prepared by Your employees or agents during the Relevant Period concerning race-neutral alternatives at UNC-CH (regardless of whether those reports, analyses, surveys or other reviews or assessments were completed or finalized).

35. All documents from each admissions cycle during the Relevant Period sufficient to show Your efforts to evaluate the feasibility and effects of race-neutral alternatives to racial preferences at UNC-CH, and how these alternatives compared to current admissions policies in achieving the educational benefits of diversity.

36. All documents concerning Your ranking, weighting, and evaluation of secondary schools during the Relevant Period and any documents sufficient to show how You arrived at such rankings, weighting, and evaluation of secondary schools.

37. All documents that mention any of the following publications as the content of these publications relate to admissions policy at UNC-CH:

a. Arcidiacono, Peter, Aucejo, Esteban & Spenner, Ken, What Happens after Enrollment? An Analysis of the Time Path of Racial Differences in GPA and Major Choice (*June 2, 2011), available at [http:// public.econ.duke.edu/~psarcidi/grades.4.0.pdf](http://public.econ.duke.edu/~psarcidi/grades.4.0.pdf);

- b. Arcidiacono, Peter, Aucejo, Esteban M., Hamming, Fang, and Spenner, Kenneth, Does Affirmative Action Lead to Mismatch? A New Test and Evidence, Economic Research Initiatives at Duke, Working Paper No. 27 at 14, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1384022;
- c. Elliott, Rogers, Strenta, A. Christopher, Adair, Russell, Matier, Michael & Scott, Jannah, The Role of Ethnicity in Choosing and Leaving Science in Highly Selective Institutions, 37 Res. Higher Ed. 681 (1996);
- d. Gail Heriot, The Sad Irony of Affirmative Action, 14 Nat'l Affairs 78 (2013);
- e. Marc Luppino and Richard Sander, College major peer effects and attrition from the sciences, IZA Journal of Labor Economics (2015);
- f. Richard Sander & Stuart Taylor, MISMATCH: HOW AFFIRMATIVE ACTION HARMS STUDENTS IT'S INTENDED TO HELP AND WHY UNIVERSITIES WON'T ADMIT IT;
- g. Richard Sander, A Systemic Analysis of Affirmative Action in Law Schools, 57 Stan. L. Rev. 367 (2004);
- h. U.S. Comm'n on Civil Rights, Affirmative Action in American Law Schools (2007);
- i. U.S., Comm'n on Civil Rights, Encouraging Minority Students to Pursue Science, Technology, Engineering and Math Careers (2010);
- j. William G. Bowen and Derek Bok, The Shape of the River;
- k. William G. Bowen and Matthew M. Chingos, Crossing the Finish Line: Completing College at America's Public Universities;

1. William G. Bowen, Martin A. Kurzweil, Eugene M. Tobin, and Susanne C. Pichler, *Equity and Excellence in American Higher Education*.

38. All documents that either mention academic “mismatch” (as that term is used in the publications listed in Request 37) as it relates to admissions or admissions policy at UNC-CH or that otherwise concern the academic performance of enrolled students who are or were academically underprepared for UNC-CH.

39. All communications during the Relevant Period concerning SFFA, the Plaintiff and its representatives, the Complaint, or this action (before or after it was filed).

40. All documents from any time that UNC contends support any denial or defense in the Answer to the Complaint.

Respectfully submitted this 21st day of May, 2015.

/s/ Thomas R. McCarthy

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2015, a copy of the foregoing was served via electronic mail on:

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